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OFFICE OF PETITIONS

In re Application of :
Dogulas O. Powell et al :
Application No. 09/665,366 : **ON PETITION**
Filed: September 19, 2000 :
Attorney Docket No. EN9-99-026 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 12, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed May 10, 2004, which set a shortened statutory period for reply of three (3) months. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). The reply submitted on September 10, 2004 did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed October 14, 2004. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed. A one month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on September 11, 2004.

A cursory review of the present petition has petitioner alleging that a complete reply was timely faxed to the USPTO on November 10, 2004. However, the Certificate of Transmission Under 37 CFR 1.8 has the wrong date; i.e., september 10, 2004 rather than November 10, 2004. Therefore, the mailing certificate was defective and could not establish a proper date of receipt of the response under 37 CFR 1.8.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. If the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3) and petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum

extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$980 extension of time submitted with the petition on November 12, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center 3726 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Amendment.

A handwritten signature in black ink, appearing to read "Wan Laymon", is written over the printed name.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy